



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Philip M. Brey—Retroactive Temporary Promotion—Back Pay

File: B-261517

Date: December 26, 1995

DIGEST

Record is insufficient to support claim by former assistant foreman at the Government Printing Office that he was detailed to the higher-graded foreman's position for an extended period and, therefore, was entitled under an agency instruction to a temporary promotion and corresponding increase in pay. The claimant failed to meet his burden of proving that he was detailed to, or performed all the duties of, the higher-graded position where the record indicates that (1) the claimant's job description required him to perform the duties of the foreman in the foreman's absence; and (2) the foreman, although detailed to another work unit, continued to supervise the claimant and retained overall responsibility for the claimant's work unit.

DECISION

Mr. Philip M. Brey, a former employee of the Government Printing Office (GPO), appeals Claims Group settlement Z-2869421, Nov. 29, 1994, denying his claim for additional pay for the period of January 12, 1987, to October 20, 1992, during which period, Mr. Brey asserts, the agency detailed him to a higher position entitling him to more pay. We conclude that the duties performed by Mr. Brey during this period did not constitute a detail to the higher position. Accordingly, we affirm the settlement.

BACKGROUND

During the period of time in question, Mr. Brey's official job title was Assistant Foreman, Video Keyboard Section (VKS), Shift 1, Electronic Photocomposition Division. On January 12, 1987, the agency detailed the VKS Foreman, Mr. Charles E. Dailey, to another section within the same division.

Through counsel, Mr. Brey asserts that the division superintendent told him that he, Mr. Brey, was in charge of the VKS until further notice. He states that he performed all of the duties of the foreman, including counseling, disciplining,

appraising, training, and otherwise supervising the VKS employees; creating training procedures; developing performance plans; making selections for vacant and new positions; and scheduling employee work. To support his claim, Mr. Brey submitted a number of statements from co-workers to the effect that he performed all the duties of the foreman. Mr. Brey also included an affidavit from Mr. Dailey stating that Mr. Brey was responsible for the day-to-day operations of the VKS and that he supervised Mr. Brey's performance. Mr. Dailey also stated that "Mr. Brey's duties during that period of time were identical to the duties I performed as the Foreman of the VKS."

The agency acknowledges that Mr. Brey assumed direction of most of the operations of the VKS in Mr. Dailey's absence, but disputes that this constituted a detail to the foreman's position.¹ The agency notes that the position description for the assistant foreman states that the assistant "[a]ssumes the duties of the Foreman in his/her absence." The agency also notes that Mr. Dailey continued to supervise Mr. Brey's performance. Finally, the agency points to a statement in the record from the division superintendent that when Mr. Dailey was detailed to another section, "it was my intent that Mr. Brey assume the function of assigning work and handling the details of the section, but that Mr. Dailey would still remain in overall charge."

OPINION

To establish a claim for backpay based on a detail to a higher-graded position, a claimant must show that (1) an agency regulation or agreement requires a temporary promotion for such a detail; and (2) he or she actually was detailed to a higher-graded position. Turner-Caldwell III, 61 Comp. Gen. 408 (1982); Albert C. Beachley and Robert S. Davis, 61 Comp. Gen. 403 (1982).

In this case, the agency concedes the first point. GPO Instruction 615.1B, Regulations Governing the Detail of Employees, Feb. 2, 1976, which still is in effect, provides that employees detailed to higher positions for more than 30 days should be given temporary promotions. In Howard A. Morrison, B-210917, Aug. 10, 1983, we concluded that this Instruction establishes a nondiscretionary agency policy and that the failure to comply with the Instruction may justify an award of backpay under the Back Pay Act, 5 U.S.C. § 5596.

¹Preliminarily, the agency contends that Mr. Brey's claim should be dismissed because it is time barred by virtue of a GPO regulation that supersedes the general 6-year limitation period for submitting a claim to our Office under 31 U.S.C. § 3702(b). We disagree, since the regulation relied upon by the agency expired by its terms effective December 31, 1984, and the agency acknowledges that it has not been replaced.

With respect to the second point, the claimant has the burden of proving that he or she was detailed to and performed the duties of a higher-graded position. See, e.g., Dennis F. Morgan, B-203926, Sept. 22, 1981. This is a factual determination, and where the agency's determination is reasonable, we will not substitute our judgment for that of the agency. See, e.g., Jimmie D. Brewer, B-205452, Mar. 15, 1982.

In a submission to our Office dated April 21, 1994, the General Counsel of GPO explained the basis for the agency's determination in Mr. Brey's case as follows:

"Mr. Dailey remained the Foreman of VKS, although with less of a day-to-day "hands-on" role. In other words, Mr. Brey was not "detailed" into a higher-level position, he was asked to perform a broader range of functions which were consistent with his position description, but the level of responsibility remained unchanged."

We agree with the agency's determination. Requiring an employee to assume and perform the duties of another position on an acting basis, when specifically required by that employee's own position description, fundamentally does not constitute a detail to the other position. Instead, the employee is engaged in carrying out responsibilities within the scope of his or her regular position even if the employee continues to perform in an acting capacity for an extended period. See our decision of today in Martin Kirchhausen, B-261661. As noted above, Mr. Brey's position description as assistant foreman specifically required him to perform the duties of the foreman on an acting basis.

Further, even if Mr. Brey's performance of the foreman's duties could be regarded as a detail, our decisions allowing backpay require a showing that the claimant performed all of the duties of the higher-graded position. See, e.g., Dennis F. Morgan, B-203926, Sept. 22, 1981; Talmadge S. King, B-202106, July 20, 1981. This is not the case here since the Foreman, Mr. Dailey, continued to supervise Mr. Brey and retained overall responsibility for the VKS work unit.

Accordingly, the settlement denying Mr. Brey's claim is affirmed.

/s/ Seymour Efros
for Robert P. Murphy
General Counsel